

1 ROB BONTA  
Attorney General of California  
2 R. MATTHEW WISE  
Supervising Deputy Attorney General  
3 WILL SETRAKIAN, CA State Bar No. 335045  
Deputy Attorney General  
4 300 South Spring Street, Suite 1702  
Los Angeles, CA 90013-1230  
5 Telephone: (213) 269-6668  
Fax: (916) 731-2125  
6 E-mail: William.Setrakian@doj.ca.gov  
*Attorneys for Attorney General Rob Bonta*  
7

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF TEXAS  
10

11 **EXXON MOBIL CORPORATION,**

12 Plaintiff,

13 **v.**

14 **ROBERT ANDRES BONTA A.K.A. ROB**  
15 **BONTA, IN HIS INDIVIDUAL**  
16 **CAPACITY, ET AL.,**

17 Defendants.  
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1:25-cv-11-MJT

**DEFENDANT ATTORNEY GENERAL  
ROB BONTA'S MOTION TO DISMISS**

Judge: Hon. Michael Truncale  
Action Filed: January 6, 2025

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**STATEMENT OF THE ISSUES**

1. Whether the Court has personal jurisdiction over Attorney General Bonta for statements that he made outside of Texas and that did not target Texas.

2. Whether Attorney General Bonta acted in the scope of his employment when he discussed litigation being pursued by the Department that he leads during events at which he appeared in his official capacity, and through email and social-media communications.

3. Whether a plaintiff can evade the Eleventh Amendment's bar on suing government officials for money damages by purporting to sue an official in his individual capacity for official conduct.

4. Whether the Court should dismiss ExxonMobil's declaratory relief request, if it concludes that none of ExxonMobil's other causes of action can proceed against Attorney General Bonta.

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**INTRODUCTION**

ExxonMobil sues an out-of-state Attorney General based on statements describing litigation brought in that official's jurisdiction. And it sues him in his individual capacity, seeking money from him directly. This lawsuit is foreclosed on justiciability grounds by well-established precedent—and for good reason. If such suits were allowed to proliferate, elected officials nationwide would face financial threats in far-flung jurisdictions, just for fulfilling the duties of their offices. The Court should grant this Motion to Dismiss.

First, the Court lacks personal jurisdiction over Attorney General Bonta. This suit does not arise out of Attorney General Bonta's contacts with Texas. Instead, it stems from out-of-state comments, none of which were made in Texas, or target Texas or an audience therein. ExxonMobil touts its Texas connections, but those do not establish personal jurisdiction. Rather, courts look to the defendant's forum-state contacts, not the plaintiff's. Separately, California's state-law action against ExxonMobil also does not establish minimum contacts for personal jurisdiction.

Second, both California and Texas immunity law bar this action. Both states immunize public officials from suit for actions taken in the scope of their employment. Whichever law this Court applies, Attorney General Bonta's comments on his Department's pending litigation fall in

1 the heartland of his employment duties.

2 Third, the Eleventh Amendment bars this suit. A plaintiff cannot sue a state official for  
3 money damages in federal court. As with the state-law immunities for public officials, a plaintiff  
4 cannot end-run around this doctrine by purporting to sue a state employee in his individual  
5 capacity for official conduct.

6 Finally, ExxonMobil’s declaratory relief claim fails because declaratory relief cannot  
7 proceed in the absence of another valid cause of action.

8 None of these legal defects can be cured by amendment. The Court should apply well-  
9 settled law and dismiss the Complaint against Attorney General Bonta without leave to amend.

## 10 **FACTUAL SUMMARY**

11 Last September, the People of the State of California sued ExxonMobil in California state  
12 court alleging several state-law causes of action related to ExxonMobil’s marketing and  
13 promoting plastics as recyclable. Declaration of Robert William Setrakian (“Setrakian Decl.”)  
14 Ex. A; *see* Request for Judicial Notice (“RJN”). The suit alleges that ExxonMobil deceptively  
15 promoted plastics recycling as a solution to overabundant plastic waste, including by advertising  
16 it in California publications. Setrakian Decl., Ex. A at ¶¶ 51–58. And it claims that  
17 ExxonMobil’s misconduct injured California by, among other things, despoiling its rivers and  
18 beaches, suppressing its tourism industry, cramping its fishing economy, and sapping its  
19 resources by diverting them to cleanup efforts. *Id.* at ¶¶ 360–72, 378, 391, 394–405. Attorney  
20 General Bonta subsequently discussed the lawsuit and its allegations in several public  
21 appearances made in his capacity as Attorney General. Compl. Ex. 1; Cal. Dep’t of Justice,  
22 *Attorney General Bonta, Environmental NGOs Discuss Plastics Deception Lawsuit Against*  
23 *ExxonMobil*, YouTube (Sept. 23, 2024), [https://www.youtube.com/watch?v=OR24jmO\\_uNY](https://www.youtube.com/watch?v=OR24jmO_uNY)  
24 (“DOJ YouTube Video”); *California Sues Exxon over Global Plastic Pollution*, YouTube (Sept.  
25 23, 2024), <https://www.youtube.com/watch?v=Nsy8exWEcxw> (“Reuters Video”); *Climate Week*  
26 *NYC 2024—Rob Bonta*, YouTube (Sept. 23, 2024),  
27 [https://www.youtube.com/watch?v=XOGn\\_nFZ3Q8](https://www.youtube.com/watch?v=XOGn_nFZ3Q8) (“Climate Week Video”); *California AG*  
28 *Rob Bonta on ExxonMobil Lawsuit: They Lied to the World*, CNBC (Sept. 24, 2024),

1 [https://www.cnbc.com/video/2024/09/24/california-ag-rob-bonta-on-exxon-mobil-lawsuit-they-](https://www.cnbc.com/video/2024/09/24/california-ag-rob-bonta-on-exxon-mobil-lawsuit-they-lied-to-the-world.html)  
 2 [lied-to-the-world.html](https://www.cnbc.com/video/2024/09/24/california-ag-rob-bonta-on-exxon-mobil-lawsuit-they-lied-to-the-world.html) (“Squawk Box Video”).<sup>1</sup> Attorney General Bonta also posted statements  
 3 about the case on his X and Instagram accounts, which identify him as California’s Attorney  
 4 General. Compl. Exs. 2–5; Setrakian Decl., Ex. B; *see* RJN. Finally, Attorney General Bonta  
 5 discussed the suit, and linked to press coverage of its contents, in an email to supporters. Compl.  
 6 Ex. 6.

7 This lawsuit followed. ExxonMobil alleged several Texas state-law claims against  
 8 Attorney General Bonta based on his statements about California’s suit. It brought these claims  
 9 against the Attorney General in his individual capacity.

### 10 LEGAL STANDARD

11 A motion under Federal Rule of Civil Procedure 12(b)(1) is the proper vehicle for arguing  
 12 that a suit is barred by sovereign immunity or state-law immunities.<sup>2</sup> *Berry v. Texas Woman’s*  
 13 *Univ.*, 2020 WL 9936141, at \*2 (E.D. Tex. Feb. 28, 2020), *report and recommendation adopted*,  
 14 2020 WL 10354078 (E.D. Tex. Mar. 18, 2020) (sovereign immunity); *Taylor on Behalf of T.J. v.*  
 15 *Ctr. Indep. Sch. Dist.*, 2024 WL 4001509, at \*4 (E.D. Tex. July 25, 2024), *report and*  
 16 *recommendation adopted*, 2024 WL 3997476 (E.D. Tex. Aug. 29, 2024) (state-law immunity).  
 17 The party asserting jurisdiction bears the burden of proof for a 12(b)(1) motion to dismiss.  
 18 *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

19 “Federal Rule of Civil Procedure 12(b)(2) requires a court to dismiss a claim if the court  
 20 does not have personal jurisdiction over the defendant.” *Mobolutions, LLC v. Geon Performance*  
 21 *Sols., LLC*, 2024 WL 3927251, at \*3 (E.D. Tex. Aug. 23, 2024). “On a motion to dismiss for  
 22 lack of personal jurisdiction, the plaintiff rather than the movant has the burden of proof.” *Wyatt*  
 23 *v. Kaplan*, 686 F.2d 276, 280 (5th Cir. 1982). The Court may consider documents “referred to in  
 24 the plaintiff’s complaint and [] central to her claim.” *Villarreal v. Wells Fargo Bank, N.A.*, 814

25 <sup>1</sup>The Complaint cites these videos. ECF No. 1 at 17 n.18, 25 nn.34 & 35, 26 n.40.

26 <sup>2</sup>Some courts evaluate state-law immunities under Federal Rule of Civil Procedure 12(b)(6).  
 27 *Williams v. City of Nacogdoches*, 2023 WL 4156298, at \*2, 5–7 (E.D. Tex. May 24, 2023), *report*  
 28 *and recommendation adopted*, 2023 WL 4143164 (E.D. Tex. June 21, 2023). To survive a Rule  
 12(b)(6) motion to dismiss, a complaint “must contain sufficient factual matter, accepted as true,  
 to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

1 F.3d 763, 766 (5th Cir. 2016) (quotation omitted). The Court also may consider affidavits placed  
 2 in the record. *Paz v. Brush Engineered Materials, Inc.*, 445 F.3d 809, 812 (5th Cir. 2006).

### 3 ARGUMENT

#### 4 I. THE COURT LACKS PERSONAL JURISDICTION OVER ATTORNEY GENERAL BONTA

5 In a diversity suit, personal jurisdiction is “governed by the law of the state in which the  
 6 federal court sits.” *Bulkley & Assocs., LLC v. Dep’t of Indus. Rels., Div. of Occupational Safety*  
 7 *& Health of the State of Cal.*, 1 F.4th 346, 351 (5th Cir. 2021). Texas law extends personal  
 8 jurisdiction as far as permissible by due process. *Id.* Thus, personal jurisdiction exists if a non-  
 9 resident defendant “has minimum contacts with the foreign state such that imposing a judgment  
 10 does not offend traditional notions of fair play and substantial justice.” *Id.* (citations and internal  
 11 quotations omitted).

12 “The proper focus of the ‘minimum contacts’ inquiry in intentional-tort cases [like this one]  
 13 is ‘the relationship among the defendant, the forum, and the litigation.’ And it is the defendant,  
 14 not the plaintiff or third parties, who must create contacts with the forum State.” *Walden v. Fiore*,  
 15 571 U.S. 277, 291 (2014) (citation omitted).<sup>3</sup> Courts thus “look[] to the defendant’s contacts with  
 16 the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* at 285.  
 17 “[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the  
 18 defendant’s conduct that must form the necessary connection with the forum State that is the basis  
 19 for its jurisdiction over him.” *Id.*; see also, e.g., *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476,  
 20 486 (5th Cir. 2008) (Fifth Circuit has “declined to allow jurisdiction for even an intentional tort  
 21 where the only jurisdictional basis is the alleged harm to a Texas resident”). If alleged conduct  
 22 “happened to affect” ExxonMobil in Texas, that would “not . . . confer [personal] jurisdiction,”  
 23 because such effects would be “largely a consequence of [*ExxonMobil*’s] relationship with the

24 \_\_\_\_\_  
 25 <sup>3</sup>Courts have distinguished between general and specific personal jurisdiction. *Goodyear Dunlop*  
 26 *Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). A defendant is subject to general  
 27 jurisdiction if his “affiliations with the State are so ‘continuous and systematic’ as to render [hi]m  
 28 essentially at home in the forum State.” *Id.* (citation omitted). “[S]pecific jurisdiction is confined  
 to adjudication of ‘issues deriving from, or connected with, the very controversy that establishes  
 jurisdiction.’” *Id.* (citation omitted). ExxonMobil does not allege continuous and systematic  
 affiliations with Texas sufficient to render Attorney General Bonta essentially at home in Texas  
 and subject to general jurisdiction there. This brief thus discusses only specific jurisdiction.

1 forum, and not of any actions [Attorney General Bonta] took to establish contacts with the  
2 forum.” *Sangha v. Navig8 ShipManagement Priv. Ltd.*, 882 F.3d 96, 103–04 (5th Cir. 2018).

3 The minimum-contacts inquiry asks three questions. First, whether the defendant  
4 “purposely directed [his] activities toward the forum state or purposefully availed [him]self of the  
5 privileges of conduct activities there.” *Bulkley*, 1 F.4th at 351. Second, whether the case “arises  
6 out of or results from the defendant’s forum-related contacts.” *Id.* And third, whether “the  
7 exercise of jurisdiction is fair and reasonable.” *Id.* If the Court concludes that the defendant did  
8 not purposely direct his activities towards the forum state or avail himself of that state’s  
9 privileges, it can end the inquiry without considering the remaining two factors. *Eager to*  
10 *Motivate Fitness, LLC v. Eames*, 2023 WL 11822281, at \*3 (W.D. Tex. Aug. 28, 2023); *Trax*  
11 *Recs., Ltd. v. Sherman*, 2023 WL 3275830, at \*5 (E.D. La. May 5, 2023).

12 Starting with the first prong of this analysis, Attorney General Bonta did not direct his  
13 activities toward or conduct activities in Texas. ExxonMobil identifies eleven statements by the  
14 Attorney General. Compl., ¶¶ 49, 69–78, 84–89; Exs. 1–6. Six are videos: one announcing the  
15 lawsuit against ExxonMobil and five interviews regarding the lawsuit. Compl., ¶¶ 49, 69, 75, Ex.  
16 1.<sup>4</sup> Four are social-media posts regarding the lawsuit. *Id.* Exs. 2–5. And one is a campaign  
17 email referencing the lawsuit. *Id.* at Ex. 6. These fail to establish personal jurisdiction for several  
18 reasons.

19 First, the relevant statements were not made in Texas. The Complaint does not allege that  
20 Attorney General Bonta issued the named statements in Texas, so ExxonMobil has not met its  
21 burden of establishing jurisdiction through them. *Felch v. Transportes Lar-Mex SA DE CV*, 92  
22 F.3d 320, 326 (5th Cir. 1996) (“the party who seeks to invoke the jurisdiction of the district court  
23 bears the burden of establishing contacts by the nonresident defendant sufficient to invoke the

24 <sup>4</sup>The Court may consider these videos on Attorney General Bonta’s Motion to Dismiss. A court  
25 may consider documents on a motion to dismiss if the documents “are referred to in the plaintiff’s  
26 complaint and are central to the [plaintiff’s] claims.” *Collins v. Morgan Stanley Dean Witter*, 224  
27 F.3d 496, 498–99 (5th Cir. 2000) (citation omitted). This applies to video evidence. *Robles v.*  
28 *Ciarletta*, 797 F. App’x 821, 832 (5th Cir. 2019); *Vega v. City of El Paso*, 2022 WL 789334, at  
\*4 (W.D. Tex. Mar. 15, 2022) (court may review video evidence at Motion to Dismiss phase  
“without converting the motion into one for summary judgment”) (citation omitted).  
ExxonMobil’s Complaint repeatedly mentions these videos. Compl., ¶¶ 49, 69–78, 85–89.  
Those references are central to ExxonMobil’s personal-jurisdictional argument. *Id.* ¶¶ 85–89.

jurisdiction of the court”). Instead, Attorney General Bonta issued the relevant statements outside of Texas. Six of ExxonMobil’s cited videos, two of its social-media posts, and a cited email were produced or posted when Attorney General Bonta was in New York. Affidavit of Lauren Blanchard in Support of Defendant Attorney General Rob Bonta’s Motion to Dismiss at 1–2. One social media post issued while Attorney General Bonta was in London. *Id.* at 2. And one video was recorded when Attorney General Bonta was in California.<sup>5</sup> *Id.* ExxonMobil accordingly cannot exercise personal jurisdiction based on Attorney General Bonta’s actions in Texas. *RapidDeploy, Inc. v. RapidSOS, Inc.*, 2022 WL 3045649, at \*4 (W.D. Tex. Aug. 1, 2022), *report and recommendation adopted*, 2022 WL 17814234 (W.D. Tex. Aug. 26, 2022).

Next, the Attorney General’s statements were not directed toward a Texas audience. Ten of the eleven identified statements do not mention Texas or ExxonMobil’s specific activities therein. Instead, they reference ExxonMobil’s general course of conduct in allegedly misleading consumers about plastic recycling, activity that occurs nationwide. DOJ YouTube Video, Reuters Video, Climate Week Video, Compl., Exs. 1–6. In the eleventh communication, an interviewer mentions ExxonMobil’s Texas advanced-recycling facility and requests a response to ExxonMobil’s statement about the Attorney General’s California lawsuit. The Attorney General’s response about the Texas facility is part of a broader discussion about how ExxonMobil’s course of conduct harmed California. Squawk Box Video. This brief mention of an ExxonMobil facility located in Texas, undertaken after a third party raised the topic, cannot establish personal jurisdiction over the Attorney General. *See Danzinger & De Llano, LLP v. Morgan Verkamp, LLC*, 24 F.4th 491, 498 (5th Cir. 2022) (defendant’s email to Texas plaintiff in response to unsolicited email did not “meaningfully connect [defendant] to Texas” as necessary for personal jurisdiction). And Attorney General Bonta did not direct his activities to Texas by suing ExxonMobil in California state court. *Saxton v. Faust*, 2010 WL 3446921, at \*3 (N.D. Tex.

<sup>5</sup>One of ExxonMobil’s cited videos—an interview between Attorney General Bonta and a reporter for CBS News—does not even concern this matter. Exxon erroneously dated the video “September 16, 2024,” ECF No. 1 at 25 n.34, but the video actually aired on September 16, 2023. *CA Attorney General Rob Bonta Speaks on State’s Lawsuit Against Big Oil Companies*, CBS News (Sept. 16, 2023), <https://www.cbsnews.com/losangeles/video/ca-attorney-general-rob-bonta-speaks-on-states-lawsuit-against-big-oil-companies>.



1 Aug. 31, 2010) (“[A] nonresident government official may [not] be haled into a Texas court  
 2 simply because the effects of a ruling are felt in Texas”) (citing *Stroman Realty, Inc.*, 513 F.3d at  
 3 482–85); *Shia v. Boente*, 2017 WL 6033741, at \*5 (S.D. Tex. Nov. 16, 2017), *report and*  
 4 *recommendation adopted*, 2017 WL 6025546 (S.D. Tex. Dec. 5, 2017) (individual-capacity suit).

5 That most of the alleged comments were aimed at California audiences underscores the  
 6 point. Many of the statements reference the harm ExxonMobil’s actions have caused to  
 7 California and its people, discussing plastic waste that has accumulated on California’s beaches  
 8 or waterways and related monetary costs foisted on California and its local governments. DOJ  
 9 YouTube Video; Reuters Video; Climate Week Video; Compl., Exs. 1, 6. “If the[se] article[s]  
 10 had a geographic focus[,] it was” California. *Revell v. Lidov*, 317 F.3d 467, 476 (5th Cir. 2002);  
 11 *see Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 321 (5th Cir. 2021) (no personal  
 12 jurisdiction for libel suit in case in which posting website never “solicited Texan visits to the  
 13 alleged libel”). To the extent the statements did not target California, they spoke to nationwide  
 14 listeners and did not target Texas. *Johnson*, 21 F.4th at 321–22 (“[t]o target every [person]  
 15 everywhere . . . is to target no place at all”). Accordingly, the email to supporters, Compl. Ex. 6,  
 16 for example, which was directed to a nationwide list of recipients, cannot establish personal  
 17 jurisdiction. *Christina v. Pitt*, 2020 WL 6684889, at \*6–8 (E.D. Tex. Nov. 12, 2020).

18 For these reasons, ExxonMobil presents insufficient contacts with Texas to establish  
 19 personal jurisdiction.<sup>6</sup> Nor have the remaining two prongs of the minimum contacts inquiry been  
 20 met. Because Attorney General Bonta’s comments do not establish sufficient contacts with  
 21 Texas, these claims do not arise out of his contacts with Texas. *Vortex Cos., LLC v. Amex*  
 22 *Sanivar Holding AG*, 643 F. Supp. 3d 688, 695 (S.D. Tex. 2022). And asserting jurisdiction over  
 23

24 \_\_\_\_\_  
 25 <sup>6</sup>For similar reasons, the District Court for the District of Columbia recently held that a plastics  
 26 industry group lacked personal jurisdiction over Attorney General Bonta in a case concerning a  
 27 subpoena in the same California state-law matter animating this action. *Plastics Indus. Ass’n v.*  
 28 *Bonta*, 2025 WL 1025142, at \*4 (D.D.C. Apr. 7, 2025). The industry group alleged that, among  
 other things, Attorney General Bonta’s “persistent course of conduct” in the District established  
 jurisdiction, but the Court rejected that argument because “limited mailings and communications  
 from outside the jurisdiction” could not establish personal jurisdiction over Attorney General  
 Bonta under D.C. law. *Id.*



the Attorney General is neither fair nor reasonable given his lack of Texas contacts. *Id.*; *Stroman Realty, Inc.*, 513 F.3d at 488.

The Court should dismiss Attorney General Bonta for a lack of personal jurisdiction.<sup>7</sup>

## **II. CALIFORNIA AND TEXAS LAW IMMUNIZE ATTORNEY GENERAL BONTA BECAUSE HE ACTED IN THE SCOPE OF HIS EMPLOYMENT**

California and Texas law<sup>8</sup> grant immunity to public officials for statements made in the scope of government employment. Under both California and Texas law, Attorney General Bonta's statements came in the scope of employment. The claims against him thus fail. Under California law, Attorney General Bonta falls within the state's official-immunity privilege, and ExxonMobil did not comply with the California Tort Claims Act. Under Texas law, Texas' broad official-immunity doctrine covers Attorney General Bonta's statements, and ExxonMobil sued the wrong party.

### **A. California Law**

#### **1. Attorney General Bonta Acted in the Scope of Employment**

California law defines the scope of employment broadly. In California, an employee acts in the "scope of the employment 'when he is engaged in work he was employed to perform or when the act is an incident to his duty and was performed for the benefit of his employer and not to serve his own purposes or conveniences.'" *Sanborn v. Chron. Publ'g Co.*, 556 P.2d 764, 766 (Cal. 1976) (citation omitted).

<sup>7</sup>Because the Court lacks personal jurisdiction over Attorney General Bonta, this case also is improperly venued per 28 U.S.C. section 1391. *Holland v. Weisfelner*, 2019 WL 3290862, at \*3 (S.D. Tex. July 1, 2019), *report and recommendation adopted*, 2019 WL 3288046 (S.D. Tex. July 22, 2019).

<sup>8</sup>In a federal diversity case, the court usually begins a state-law-immunity analysis by deciding which state's law applies. *Reinhardt v. Key Risk Mgmt., Inc.*, 2003 WL 292176, at \*2 (N.D. Tex. Feb. 6, 2003). The Court need not do so here. "A federal court sitting in diversity applies the conflict-of-laws rules of the state in which it sits." *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 674 (5th Cir. 2003). "Texas courts initially determine whether there is a conflict between Texas law and the other potentially applicable law." *Bailey v. Shell W. E&P, Inc.*, 609 F.3d 710, 722 (5th Cir. 2010). "If the result would be the same under the laws of either jurisdiction, there is no need to resolve the choice of law question." *SAVA gumarska in kemijska industrija d.d. v. Advanced Polymer Scis., Inc.*, 128 S.W.3d 304, 314 (Tex. App. 2004). Because the same outcome—dismissing Attorney General Bonta from the suit—follows under either California or Texas law, the Court need not conduct the choice-of-law analysis. If the Court requests briefing on the choice-of-law analysis, Attorney General Bonta will provide it.

California’s Attorney General “possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest.” *D’Amico v. Bd. of Med. Exam’rs*, 520 P.2d 10, 20 (Cal. 1974). Concerning the statutory powers, the Attorney General serves as “the state’s chief attorney,” *State Bd. of Equalization v. Superior Court*, 42 Cal. Rptr. 3d 116, 118 (Ct. App. 2006), and “head of the Department of Justice.” Cal. Gov’t Code § 12510. He thus “has charge, as attorney, of all legal matters in which the State is interested.” Cal. Gov’t Code § 12511. His duties include pursuing actions to enforce California’s environmental laws, Cal. Gov’t Code § 12600, and to protect California consumers, Cal. Bus. & Prof. Code § 321. And he may lead investigations to identify and address violations of these and other statutes. Cal. Gov’t Code §§ 11180.5, 11181.

These statutory duties are accompanied by general duties to bring enforcement actions where necessary and to inform the public of office activities. It is the Attorney General’s “duty to see that the laws of the State are adequately enforced.” *Sykes v. Superior Court*, 507 P.2d 90, 97 (Cal. 1973) (citation omitted). He thus “has the power to file any civil action or proceeding directly involving the rights and interests of the [s]tate, or which he deems necessary for the enforcement of the laws of the state . . . and the protection of public rights and interest.” *D’Amico*, 520 P.2d at 20 (citation omitted); *see also Save El Toro Ass’n v. Days*, 159 Cal. Rptr. 577, 581 (Ct. App. 1979) (Attorney General’s “function is to represent the general public . . . and to ensure proper enforcement”). As a result, he has a “dual role as representative of a state agency and guardian of the public interest.” *D’Amico*, 520 P.2d at 21. This includes “the duty to keep the public informed of his [] management of the public business.” *Rothman v. Jackson*, 57 Cal. Rptr. 2d 284, 294 n.6 (Ct. App. 1996).

Attorney General Bonta’s statements identified in the Complaint fall within his official duties as outlined above. His public comments “informed” the public of “legal matters in which the State is interested.” Cal. Gov’t Code § 12511; *D’Amico*, 520 P.2d at 20; *Rothman*, 57 Cal. Rptr. 2d at 294 n.6. He spoke “about a lawsuit that we filed and the actions that we bring at the California Attorney General’s office.” Compl. Ex. 1 at 5. He cited “California’s nation & world-leading climate action including [his] office’s first-of-its-kind lawsuit against ExxonMobil.” *Id.*

Ex. 2; *see* Ex. 5. He stated that “we’ve sued ExxonMobil.” *Id.* Ex. 4. And he quoted material providing that “California Attorney General Rob Bonta is now suing ExxonMobil.” *Id.* Ex. 5; *see also* DOJ YouTube Video at 0:43–48 (“This morning we filed a lawsuit . . . against ExxonMobil”); Reuters Video at 0:05–13 (“a lawsuit is being filed in California . . . We are suing ExxonMobil”); Climate Week Video at 0:00–06 (“Today, we, the State of California, announce a . . . lawsuit against ExxonMobil”); Squawk Box Video at 0:18–22 (“The lawsuit is, basically, the State of California suing ExxonMobil”). Throughout the cited remarks, he acted “in his capacity as Attorney General,” and “dealt exclusively with law enforcement issues”: his Department’s suit against ExxonMobil. *Kilgore v. Younger*, 640 P.2d 793, 798 (Cal. 1982). The remarks “concerned the claims being asserted in the [] action, and [offered Attorney General Bonta’s] professional opinion, as the [] attorney entrusted with plenary power over that litigation, that the matter was well worth pursuing.” *Tutor-Saliba Corp. v. Herrera*, 39 Cal. Rptr. 3d 21, 29 (Ct. App. 2006).

The fact that some statements subsequently appeared on Attorney General Bonta’s alleged “personal” social-media pages does not change this analysis. The scope-of-employment inquiry asks only whether an employee was “engaged in work he was employed to perform,” including acts “incident to his duty and [] performed for the benefit of his employer.” *Sanborn*, 556 P.2d at 766 (citation omitted). Attorney General Bonta’s social-media pages referenced by ExxonMobil identify him as California’s Attorney General. Setrakian Decl., Ex. B. The posts reflect this, describing official work: the Attorney General’s “office’s” lawsuit, Compl. Exs. 2, 3; the fact that “we”—California’s Department of Justice—had sued ExxonMobil, Compl. Ex. 4; and the conclusion that “California Attorney General Rob Bonta is now suing” ExxonMobil, Compl. Ex. 5. The social-media posts thus track, for example, *Tutor-Saliba*, in which an elected City Attorney “express[ed] his professional opinion about the justification for, and potential merits of, the . . . litigation he had initiated on behalf of” his constituent jurisdiction. 39 Cal. Rptr. 3d at 29. Attorney General Bonta’s comments were “limited to pending litigation he had filed in [state] court against” ExxonMobil. *Id.* Accordingly, “the alleged defamatory statements [Attorney General Bonta] made concerning [ExxonMobil’s] business practices related to the policy making

1 he must necessarily perform as [Attorney General], and were within the scope of his duties.” *Id.*  
 2 The statements thus were made in Attorney General Bonta’s professional, not personal, capacity.

3 The email to supporters similarly contains statements made in Attorney General Bonta’s  
 4 professional capacity. The email’s contents describe the litigation, thus serving to “inform[]” the  
 5 public of “legal matters in which the State is interested.” Cal. Gov’t Code § 12511; *D’Amico*,  
 6 520 P.2d at 20; *Rothman*, 57 Cal. Rptr. 2d at 294 n.6. The email is no different, in this respect,  
 7 from the remarks in *Tutor-Saliba*, made to members of the San Francisco Chinese–American  
 8 Democratic Club and found to be within the scope of the elected attorney’s duties. 39 Cal. Rptr.  
 9 3d at 23, 29.

## 10 **2. California Law Shields Attorney General Bonta from Liability**

11 Two California doctrines stop ExxonMobil from maintaining this suit against Attorney  
 12 General Bonta for comments made within the scope of his duties: absolute immunity for public  
 13 statements, and ExxonMobil’s failure to comply with the California Tort Claims Act.

14 California privileges statements made “in the proper discharge of an official duty.” Cal.  
 15 Civ. Code § 47(a). This “absolute privilege” extends to “high-ranking state [] officials . . . on the  
 16 rationale that their ability to function would be impaired and society adversely affected if they  
 17 were not absolutely free of the threat of suit by the defamed seeking recompense for injury.”  
 18 *Kilgore*, 640 P.2d at 798 (internal quotation and citation omitted). “For the absolute privilege to  
 19 attach, the public official need only be properly discharging an official duty.” *Id.* The privilege  
 20 thus covers “any statement by a public official, so long as it is made (a) while exercising policy-  
 21 making functions, and (b) within the scope of his official duties.” *Tutor-Saliba*, 39 Cal. Rptr. 3d  
 22 at 28 (quoting *Royer v. Steinberg*, 153 Cal. Rptr. 499, 505 (Ct. App. 1979)).

23 Accordingly, if an Attorney General gives a “press conference in his capacity as Attorney  
 24 General, purport[s] to act in such role throughout its duration and, at least as is here relevant,  
 25 deal[s] exclusively with law enforcement issues,” he cannot face litigation arising from the  
 26 substance of the statements. *Kilgore*, 640 P.2d at 798. This standard protects even conduct by  
 27 elected officials that “may well have been taken to produce a popular and appealing law  
 28 enforcement image” to burnish political credentials. *Id.* The same protections apply if a public

1 official “summariz[es] the results of an investigation” to press. *Ingram v. Flippo*, 89 Cal. Rptr. 2d  
 2 60, 69 (Ct. App. 1999), *overruled on other grounds by Leon v. County of Riverside*, 530 P.3d  
 3 1093 (Cal. 2023). For that reason, an elected law-enforcement figure like the Attorney General  
 4 may “express his professional opinion about the justification for, and potential merits of . . .  
 5 litigation he had initiated on behalf of the” state, and those remarks may be “florid and [] cast [the  
 6 defendant] in an unfavorable light,” so long as they “concern[] the claims being asserted in the []  
 7 action.” *Tutor-Saliba*, 39 Cal. Rptr. 3d at 29.

8 Attorney General Bonta is thus immune from suit regarding his comments. As discussed  
 9 above, Attorney General Bonta’s comments, which concerned the existence and merits of  
 10 litigation that the Department of Justice initiated during his tenure, fall within the scope of his  
 11 employment. These statements all “related to a matter properly within the [Attorney General’s]  
 12 jurisdiction,” *Royer*, 153 Cal. Rptr. at 505—enforcement of California law. Cal. Gov’t Code  
 13 §§ 11180.5, 11181, 12600. He thus falls within this doctrine’s protection.

14 Applying absolute immunity also serves the doctrine’s policy goals. “[T]he purpose of the  
 15 official immunity accorded government officers is to avoid the ‘chilling effect’ which the fear of  
 16 damage suits would have on the energetic performance of the public’s business.” *Kilgore*, 640  
 17 P.2d at 800 (citing *Barr v. Mateo*, 360 U.S. 564, 571 (1958) (plurality op.)). By avoiding such  
 18 judicial chilling, the law bolsters the separation of powers, ensuring that recourse for allegedly  
 19 improper public statements comes from the political sphere, not civil litigation. *Id.* at 799–800.  
 20 Letting this suit proceed against Attorney General Bonta would threaten every state’s top law-  
 21 enforcement official with nationwide civil litigation, dimming the energy with which the states’  
 22 chosen leaders serve their constituents.

23 Even if ExxonMobil could surmount this privilege, its suit would fail because it did not  
 24 comply with the California Tort Claims Act. In California, under the Tort Claims Act “a cause of  
 25 action against a public employee . . . for injury resulting from an act or omission in the scope of  
 26 his employment as a public employee is barred if an action against the employing public entity  
 27 for such injury is barred . . .” Cal. Gov’t Code § 950.2. An action against a public entity, in  
 28 turn, is barred if a plaintiff does not “timely file a claim for money or damages with the public

entity” before suing. *Willis v. City of Carlsbad*, 262 Cal. Rptr. 3d 528, 539 (Ct. App. 2020) (quotation omitted) (citing Cal. Gov’t Code § 911.2). This requirement applies in federal diversity suits. *Robinson v. Alameda Cnty.*, 875 F. Supp. 2d 1029, 1044 (N.D. Cal. 2012).

ExxonMobil has not alleged compliance with the California Tort Claims Act or otherwise indicated that it complied. And a plaintiff cannot avoid this statutory bar by claiming that it sued the defendant in his individual capacity if the suit concerns official conduct. *Newton v. Arapaia*, 2005 WL 1562787, at \*5 (N.D. Cal. June 28, 2005). Thus, ExxonMobil’s suit has not satisfied the California Tort Claims Act.

## **B. Texas Law**

### **1. Attorney General Bonta Acted in the Scope of Employment**

ExxonMobil’s suit also fails if Texas law applies. As an initial matter, Attorney General Bonta’s statements fall within the scope of his employment under Texas law. Texas law defines the “scope of employment” as the “performance for a governmental unit of the duties of an employee’s office or employment[,] includ[ing] being in or about the performance of a task lawfully assigned to an employee by a competent authority.” Tex. Civ. Prac. & Rem. Code Ann. § 101.001(5). The scope-of-employment analysis seeks “a connection between the employee’s job duties and the alleged tortious conduct[.]” *Laverie v. Wetherbe*, 517 S.W.3d 748, 753 (Tex. 2017). To find that link, the inquiry “focuses on ‘performance . . . of the duties of an employee’s office or employment,’ . . . an objective assessment of whether the employee was doing her job when she committed an alleged tort, not her state of mind when she was doing it.” *Id.* (quoting Tex. Civ. Prac. & Rem. Code Ann. § 101.001(5)). “[E]ven if [a] law enforcement officer acts partly to serve his or her own interests and allegedly commits tortious acts,” his conduct ranks as official if he discharges duties assigned to him. *Carter v. Diamond URS Huntsville, LLC*, 175 F. Supp. 3d 711, 751 (S.D. Tex. 2016); *see also Laverie*, 517 S.W.3d at 753 (employee acts within scope of employment “even if the employee performs negligently or is motivated by ulterior motives or personal animus so long as the conduct itself was pursuant to her job responsibilities”).

1 Attorney General Bonta’s statements came in his employment’s scope under this broad  
 2 definition. As discussed above, the California Attorney General’s employment duties include  
 3 filing civil actions and “keep[ing] the public informed of his or her management of the public  
 4 business.” *Rothman*, 57 Cal. Rptr. 2d at 294 n.6; *see also D’Amico*, 520 P.2d at 20. These duties  
 5 are connected to the alleged tortious conduct because Attorney General Bonta’s communications  
 6 about the performance of his duties purportedly spawned ExxonMobil’s suit.

7 As is true under California law, the fact that Attorney General Bonta posted on his allegedly  
 8 “personal” social-media accounts is not relevant to the analysis. Because Attorney General  
 9 Bonta’s job responsibilities include disseminating his office’s conduct to the public, the Court  
 10 “must conclude [he] was acting in the scope of his employment regarding the [social-media]  
 11 statements attributed to him.” *Schapira v. Salazar*, 2022 WL 2960229, at \*3–4 (Tex. App. July  
 12 27, 2022) (not designated for publication) (holding public official immune for statements made  
 13 on social media). Similarly, the email to supporters falls within Attorney General Bonta’s scope  
 14 of employment. The communication informed recipients of his office’s activities and its  
 15 management of the public business, even if it allegedly “act[ed] partly to serve his [] own  
 16 interests.” *Carter*, 175 F. Supp. 3d at 751; *Laverie*, 517 S.W.3d at 753.

## 17 **2. Texas Law Shields Attorney General Bonta from Liability**

18 Texas law “strongly favors dismissal of suits against government employees.” *Jennings v.*  
 19 *Abbott*, 538 F. Supp. 3d 682, 692 (N.D. Tex. 2021) (citing *Garza v. Harrison*, 574 S.W.3d 389,  
 20 399–400 (Tex. 2019)). Because Attorney General Bonta acted in the scope of his employment,  
 21 such dismissal is warranted for two reasons, one based on Texas common law and the other on  
 22 state statute.

23 First, Texas’s common-law official immunity doctrine shields Attorney General Bonta from  
 24 suit. A state official sued in his individual capacity receives official immunity so long as the acts  
 25 were discretionary duties within the scope of his authority and he acted in good faith. *Kassen v.*  
 26 *Hatley*, 887 S.W.2d 4, 9 (Tex. 1994). Attorney General Bonta satisfies this test.

27 Attorney General Bonta’s statements fulfilled discretionary duties. “If an action involves  
 28 personal deliberation, decision, and judgment, it is discretionary; an action that requires



1 obedience to orders or the performance of a duty to which the employee has no choice is  
2 ministerial.” *Ramos v. Tex. Dep’t of Pub. Safety*, 35 S.W.3d 723, 727 (Tex. App. 2000).

3 Attorney General Bonta was not ordered or instructed to speak publicly about California’s lawsuit  
4 against ExxonMobil—instead, he exercised personal deliberation and judgment in speaking to the  
5 press.

6 Attorney General Bonta’s statements also came within the scope of his authority. “A tort is  
7 within the course and scope of the employee’s authority [for purposes of this test] if his action  
8 (1) was within the employee’s general authority; (2) was in furtherance of the employer’s  
9 business; and (3) was for the accomplishment of the object for which the employee was hired.”  
10 *Knight v. City Streets, L.L.C.*, 167 S.W.3d 580, 583 (Tex. App. 2005). As explained above,  
11 Attorney General Bonta has the authority to speak publicly on behalf of the Department of  
12 Justice, particularly regarding actions the Department is pursuing. Here, his statements concerned  
13 active Department of Justice litigation, furthering the Department’s business and  
14 “accomplish[ing] the object for which” he is employed.

15 Finally, Attorney General Bonta spoke in good faith. Courts evaluate good faith against an  
16 objective standard. *Cloud v. McKinney*, 228 S.W.3d 326, 336 (Tex. App. 2007). In the  
17 defamation context, an employee must show that “a reasonably prudent employee, under the same  
18 circumstances, could have believed that his [statement] was justified.” *Id.* That requires  
19 “consider[ing] the circumstances in which the allegedly defamatory statement was made.” *Id.* at  
20 338.

21 The circumstances here show the good-faith nature of Attorney General Bonta’s statements:  
22 they offered commentary to the press and the public about Department litigation, explaining the  
23 reasons why he and the Department believed that litigation furthered the interests of California  
24 and its citizens. *See Avila v. Larrea*, 394 S.W.3d 646, 662 (Tex. App. 2012). Plaintiffs cannot  
25 show that “no reasonable person in [Attorney General Bonta]’s position could have thought the  
26 facts were such that they justified [his] acts.” *Hunt v. Smith*, 67 F. Supp. 2d 675, 683 (E.D. Tex.  
27 1999) (quoting *City of Lancaster v. Chambers*, 883 S.W.2d 650, 657 (Tex. 1994)).  
28



1 Attorney General Bonta thus acted in the scope of his employment, and the Court should  
 2 vindicate Texas’s interest in “dismissal of suits against government employees.” *Jennings*, 538 F.  
 3 Supp. 3d at 692.

4 Second, ExxonMobil failed to sue the proper defendant under the Texas Tort Claims Act  
 5 based on its sought remedy. Texas law requires a plaintiff, when initiating suit, to decide  
 6 “whether an employee acted independently and is thus solely liable, or acted within the general  
 7 scope of his or her employment such that the governmental unit is vicariously liable.” *Mission*  
 8 *Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653, 657 (Tex. 2008). And it requires dismissing  
 9 a government-employee defendant “if the plaintiff’s claim (1) is based on conduct within the  
 10 general scope of the defendant’s employment with a governmental unit and (2) could have been  
 11 brought against the governmental unit.” *Jennings*, 538 F. Supp. 3d at 692 (citing *Garza*, 574  
 12 S.W.3d at 399–400). A suit could have been brought against a government unit if it could be  
 13 filed against that unit, even if Texas law does not waive immunity for the tort alleged. *Frick v.*  
 14 *Jergins*, 657 S.W.3d 840, 848 (Tex. App. 2022). This procedure applies in federal court. *See*  
 15 *Jennings*, 538 F. Supp. 3d at 692–93.

16 Because ExxonMobil sued Attorney General Bonta for conduct taken in the scope of his  
 17 duties, it had to sue the “government unit”—that is, it had to sue him in his *official* capacity. Tex.  
 18 Civ. Prac. & Rem. Code Ann. § 101.106(f). Because it did not do so, the case should receive  
 19 “early dismissal.” *Tex. Adjutant Gen.’s Off. v. Ngokoue*, 408 S.W.3d 350, 355 (Tex. 2013).<sup>9</sup>

### 20 **III. THE ELEVENTH AMENDMENT BARS EXXONMOBIL’S SUIT**

21 In addition to state-law statutory immunity, ExxonMobil’s suit must also surrender to  
 22 federal sovereign immunity. The Eleventh Amendment forbids suits “against one of the United  
 23 States by Citizens of another State.” This immunity applies to state-law claims brought in federal

24 \_\_\_\_\_  
 25 <sup>9</sup>Even if ExxonMobil refiled this suit against Attorney General Bonta in his official capacity as  
 26 contemplated by section 101.106(f), it would fail. Under Texas law, state officials cannot be held  
 27 liable for intentional torts. *City of Hempstead v. Kmiec*, 902 S.W.2d 118, 122 (Tex. App. 1995).  
 28 ExxonMobil alleges exclusively intentional torts. *Richardson Hosp. Auth. v. Duru*, 387 S.W.3d  
 109, 112 (Tex. App. 2012) (business disparagement); *City of Houston v. Guthrie*, 332 S.W.3d  
 578, 593 (Tex. App. 2009) (tortious interference); *Fontenot v. Stinson*, 369 S.W.3d 268, 274  
 (Tex. App. 2011) (civil conspiracy); *Donohue v. Butts*, 516 S.W.3d 578, 581 (Tex. App. 2017)  
 (defamation).

1 court. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 117 (1984). “[S]overeign  
 2 immunity also prohibits suits against state officials or agencies that are effectively suits against a  
 3 state,” so “Eleventh Amendment immunity is not limited to cases in which states are named as  
 4 defendants.” *City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019). “[T]he general rule is  
 5 that relief sought nominally against an officer is in fact against the sovereign if the decree would  
 6 operate against the latter.” *Pennhurst*, 465 U.S. at 101 (citation and quotation omitted).

7 ExxonMobil tries to evade the Eleventh Amendment by naming Attorney General Bonta in  
 8 his individual capacity, but precedent anticipates and prohibits this maneuver. “[T]he fact a  
 9 plaintiff brings a suit against a state employee solely in that employee’s individual capacity does  
 10 not eliminate the Eleventh Amendment as a possible defense.” *Stramaski v. Lawley*, 44 F.4th  
 11 318, 324 (5th Cir. 2022). This is because Eleventh Amendment interests are not “sacrificed to  
 12 elementary mechanics of captions and pleading.” *Idaho v. Coeur d’Alene Tribe of Idaho*, 521  
 13 U.S. 261, 270 (1997). Thus, if an employee is named in his individual capacity but “the state is  
 14 the real and substantial party in interest, the Eleventh Amendment may bar the suit. Whether the  
 15 state is the real party in interest depends on the circumstances of the case.” *Stramaski*, 44 F.4th at  
 16 322 (internal quotation and citation omitted).

17 The Eleventh Amendment bars this suit. As discussed above, ExxonMobil has sued  
 18 Attorney General Bonta for official conduct. A suit pulling him into federal court and seeking  
 19 damages thus “operate[s] against” the State of California, *Pennhurst*, 465 U.S. at 101 (quotation  
 20 omitted), targeting it as “the real and substantial party in interest” and causing the Eleventh  
 21 Amendment to block the suit, *Stramaski*, 44 F.4th at 322 (quotation omitted). Naming Attorney  
 22 General Bonta personally is thus a “transparent[] effort at an end run around the Eleventh  
 23 Amendment.” *Id.* at 323 (quoting *Modica v. Taylor*, 465 F.3d 174, 183 (5th Cir. 2006)).

24 Moreover, this litigation targets California’s coffers. A state indemnification policy confers  
 25 Eleventh Amendment protection if a suit enforces “personal liability for implementing a State  
 26 policy.” *Henley v. Simpson*, 527 F. App’x 303, 307 (5th Cir. 2013). If a State were not to  
 27 immunize officers under such circumstances, “no rational official would assume [] state-office  
 28 positions.” *Id.* Here, California would indemnify Attorney General Bonta for liability because

1 the suit concerns actions taken within the scope of his employment. Cal. Gov't Code § 825(a).  
 2 The Eleventh Amendment thus shields Attorney General Bonta from suit.

#### 3 **IV. THE COURT SHOULD NOT ISSUE DECLARATORY RELIEF**

4 In addition to ExxonMobil's state-law causes of action, it seeks declaratory relief on the  
 5 merits of the California Department of Justice's state-law suit proceeding in California state  
 6 court. But ExxonMobil's declaratory-relief request cannot proceed without another of its other  
 7 causes of action. *Stallings v. CitiMortgage, Inc.*, 611 F. App'x 215, 218 (5th Cir. 2015) ("When  
 8 [all] other claims have been dismissed, it is appropriate also to dismiss any declaratory-judgment  
 9 request."); *Val-Com Acquisitions Tr. v. CitiMortgage, Inc.*, 421 F. App'x 398, 400 (5th Cir. 2011)  
 10 (per curiam) ("Both Texas and federal law require the existence of a justiciable case or  
 11 controversy in order to grant declaratory relief"). As discussed above, the Court lacks personal  
 12 jurisdiction over Attorney General Bonta, and statutory and constitutional immunities shield him  
 13 from suit. Once the Court dismisses the tort causes of action for these reasons, this cause of  
 14 action, too, must fail.

15 Even if the Court allows one of ExxonMobil's other causes of action to proceed, it still  
 16 should dismiss this claim. Although ExxonMobil does not explain whether it seeks relief under  
 17 the federal Declaratory Judgment Act or Texas declaratory-judgment law,<sup>10</sup> the request fails  
 18 either way because courts do not entertain declaratory-relief requests concerning subject matter  
 19 that is pending before other tribunals. *Travelers Ins. Co. v. La. Farm Bureau Fed'n, Inc.*, 996  
 20 F.2d 774, 778 (5th Cir. 1993); *BHP Petroleum Co. Inc. v. Millard*, 800 S.W.2d 838, 841 (Tex.  
 21 1990). This principle extends to proceedings in other states—courts extend comity to foreign  
 22 trials, "stay[ing] the later-filed proceeding pending adjudication of the first suit." *In re BP Oil*  
 23 *Supply Co.*, 317 S.W.3d 915, 919 (Tex. App. 2010); *Tex. Employers' Ins. Ass'n v. Jackson*, 862  
 24 F.2d 491, 506 (5th Cir. 1988). Because ongoing litigation in California addresses the issues  
 25 sought to be resolved by declaratory judgment, this claim fails.

26  
 27 <sup>10</sup>If state law is the basis for relief, "[t]he Texas Declaratory Judgment Act is a procedural  
 28 mechanism that is inapplicable in federal court." *Hansen v. Protective Life Ins. Co.*, 642 F. Supp.  
 3d 587, 595 (S.D. Tex. 2022).

1 **CONCLUSION**

2 The Court should grant Attorney General Bonta's Motion to Dismiss. And because  
3 ExxonMobil cannot cure the identified deficiencies, the Court should deny leave to amend.<sup>11</sup>

4 Dated: April 24, 2025

Respectfully submitted,

5 ROB BONTA  
6 Attorney General of California  
7 R. MATTHEW WISE  
8 Supervising Deputy Attorney General

9 */s/ Robert William Setrakian*

10 WILL SETRAKIAN  
11 Deputy Attorney General (CA SBN  
335045), admitted *pro hac vice*  
12 300 South Spring Street, Suite 1702  
Los Angeles, CA 90013-1230  
13 Telephone: (213) 269-6668  
Fax: (916) 731-2125  
14 E-mail: William.Setrakian@doj.ca.gov  
*Attorneys for Attorney General Robert*  
*Bonta*

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25 <sup>11</sup>If Attorney General Bonta's co-defendants prevail on Rule 12(b) arguments, including  
26 arguments that the Complaint fails to state a claim on any of its causes of action, the Court should  
27 also grant relief as to Attorney General Bonta, assuming that he is "similarly situated" to the co-  
28 defendants with respect to those arguments. *Williams v. Am. Com. Lines, Inc.*, 2021 WL  
4143931, at \*6 n.47 (M.D. La. July 29, 2021), *report and recommendation adopted*, 2021 WL  
4145083 (M.D. La. Sept. 10, 2021), *vacated on other grounds and remanded*, 2022 WL 1652778  
(5th Cir. May 24, 2022); *see also Lewis v. Lynn*, 236 F.3d 766, 768 (5th Cir. 2001).

**CERTIFICATE OF COMPLIANCE**

I certify that on April 24<sup>th</sup> 2025, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ Robert William Setrakian

Will Setrakian

## CERTIFICATE OF SERVICE

Case Name: Exxon Mobil v. Bonta

No. 1:25-cv-00011-MJT

I hereby certify that on **April 24, 2025**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

1. **DEFENDANT ATTORNEY GENERAL ROB BONTA'S MOTION TO DISMISS**
2. **[PROPOSED] ORDER GRANTING DEFENDANT ATTORNEY GENERAL ROB BONTA'S MOTION TO DISMISS**
3. **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT ATTORNEY GENERAL ROB BONTA'S MOTION TO DISMISS**
4. **DECLARATION OF ROBERT WILLIAM SETRAKIAN IN SUPPORT OF DEFENDANT ATTORNEY GENERAL ROB BONTA'S MOTION TO DISMISS**
5. **EXHIBIT A OF THE DECLARATION OF ROBERT WILLIAM SETRAKIAN IN SUPPORT OF DEFENDANT ATTORNEY GENERAL ROB BONTA'S MOTION TO DISMISS**
6. **EXHIBIT B OF THE DECLARATION OF ROBERT WILLIAM SETRAKIAN IN SUPPORT OF DEFENDANT ATTORNEY GENERAL ROB BONTA'S MOTION TO DISMISS**
7. **AFFIDAVIT OF LAUREN BLANCHARD IN SUPPORT OF DEFENDANT ATTORNEY GENERAL ROB BONTA'S MOTION TO DISMISS**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **April 24, 2025**, at Los Angeles, California.

J. Martinez

Declarant

*J. Martinez*  
Signature